IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 72.

THE UNITED STATES, *Petitioner*,

v.

STANDARD RICE COMPANY, INC.

On Writ of Certiorari to the Court of Claims.

BRIEF FOR THE RESPONDENT.

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OPINION BELOW.

The opinion of the Court of Claims (R. 37-41) is reported in 53 F. Supp. 717.

JURISDICTION.

The judgment of the Court of Claims was entered February 7, 1944 (R. 41). The petition for a writ of certiorari was filed on April 28, 1944, and was granted on June 12,

1944 (R. 42). The jurisdiction of this Court rests on Section 3(2) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTION PRESENTED.

The question involved is whether respondent should be denied the right to recover amounts withheld by the Comptroller General from admitted overpayments of income taxes because of an alleged indebtedness for processing taxes on rice furnished the United States under a contract which provided:

> "Prices bid herein include any Federal tax heretofore imposed by the Congress which is applicable to the material on this bid. Any sales tax, duties, imposts, revenues, excise or other taxes which may hereafter (the date set for the opening of this bid) be imposed by the Congress and made applicable to the material on this bid will be charged to the Government and entered on invoices as a separate item."

The respondent did not pay the processing taxes on the rice supplied because their collection was permanently enjoined following the Supreme Court decision that the Agricultural Adjustment Act was unconstitutional. Respondent did pay $1,706.59 in unjust enrichment taxes upon the units supplied to the United States in this transaction.

STATUTES INVOLVED.

Budget and Accounting Act, 1921, c. 18, 42 Stat. 20:

> SEC. 305. Section 236 of the Revised Statutes is amended to read as follows:
>
> "SEC. 236. All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office." (31 U. S. C., Sec. 71.)

Agricultural Adjustment Act, c. 25, 48 Stat. 31, as amended:

SEC. 9. (a) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that any one or more payments authorized to be made under section 8 are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; * * *. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (b). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that all payments authorized under section 8 which are in effect are to be discontinued with respect to such commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture * * * (7 U. S. C., Sec. 609).

MISCELLANEOUS

SEC. 10. * * * *

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title. Any violation of any regulation shall be subject to such penalty, not in excess of $100, as may be provided therein.

* * * * * * * * * * *

(7 U. S. C., Sec. 610)

COMMODITIES

SEC. 11. As used in this title, the term "basic agricultural commodity" means wheat, rye, flax, barley, cotton, field corn, grain sorghums, hogs, cattle, rice, potatoes, tobacco, peanuts, sugar beets and sugarcane, and milk and its products, and any regional or market classification, type, or grade thereof; * * * (7 U. S. C., Sec. 611).

Revenue Act, 1936, c. 690, 49 Stat. 1734:

SEC. 501. Tax on Net Income from Certain Sources.

(a) The following taxes shall be levied, collected, and paid for each taxable year (in addition to any other tax on net income), upon the net income of every person which arises from the sources specified below:

(1) A tax equal to 80 per centum of that portion of the net income from the sale of articles with respect to which a Federal excise tax was imposed on such person but not paid which is attributable to shifting to others to any extent the burden of such Federal excise tax and which does not exceed such person's net income for the entire taxable year from the sale of articles with respect to which such Federal excise tax was imposed. * * *

(c) The net income from the sales specified in subsection (a)(1) shall be computed as follows:

(1) From the gross income from such sales there shall be deducted the allocable portion of the deductions from gross income for the taxable year which are allowable under the applicable Revenue Act; or

(2) If the taxpayer so elects by filing his return on such basis, the total net income for the taxable year from the sale of all articles with respect to which each Federal excise tax was imposed (computed by deducting from the gross income from such sales the allocable portion of the deductions from gross income which are allowable under the applicable Revenue Act, but without deduction of the amount of such Federal excise tax which was paid or of the amount of reimbursement to purchasers

with respect to such Federal excise tax) shall be divided by the total quantity of such articles sold during the taxable year and the quotient shall be multiplied by the quantity of such articles involved in the sales specified in subsection (a)(1). Such quantities shall be expressed in terms of the unit on the basis of which the Federal excise tax was imposed.

For the purposes of this section the proper apportionment and allocation of deductions with respect to gross income shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary. * * *

(c) For the purposes of subsection (a)(1), (2), and (3) the extent to which the taxpayer shifted to others the burden of a Federal excise tax shall be presumed to be an amount computed as follows:

(1) From the selling price of the articles there shall be deducted the sum of (A) the cost of such articles plus (B) the average margin with respect to the quantity involved; or

(2) If the taxpayer so elects by filing his return on such basis, from the aggregate selling price of all articles with respect to which such Federal excise tax was imposed and which were sold by him during the taxable year (computed without deduction of reimbursement to purchasers with respect to such Federal excise tax) there shall be deducted the aggregate cost of such articles, and the difference shall be reduced to a margin per unit in terms of the basis on which the Federal excise tax was imposed. The excess of such margin per unit over the average margin (computed for the same unit) shall be multiplied by the number of such units represented by the articles with respect to which the computation is being made; but

(3) In no case shall the extent to which the taxpayer shifted to others the burden of the Federal excise tax with respect to the articles be deemed to exceed the amount of such tax with respect to such articles minus (A) the portion of the amount of the Federal excise tax (or of the reimbursement speci-

fied in subsection (a) (2) with respect to the articles which is paid or credited by the taxpayer to any purchasers as specified in subsection (f) (3) and minus (B) the amount of any increase in the tax under section 602 of the Revenue Act of 1932 for which the taxpayer under this section became liable as the result of the nonpayment or refund of the Federal excise tax with respect to the articles.

(f) As used in this section—

(1) The term "margin" means the difference between the selling price of articles and the cost thereof, and the term "average margin" means the average difference between the selling price and the cost of similar articles sold by the taxpayer during his six taxable years preceding the initial imposition of the Federal excise tax in question, except that if during any part of such six-year period the taxpayer was not in business, or if his records for any part of such period are so inadequate as not to furnish satisfactory data, the average margin of the taxpayer for such part of such period shall, when necessary for a fair comparison, be deemed to be the average margin, as determined by the Commissioner, of representative concerns engaged in a similar business and similarly circumstanced.

(2) The term "cost" means, in the case of articles manufactured or produced by the taxpayer, the cost to the taxpayer of materials entering into the articles; or, in the case of articles purchased by the taxpayer for resale, the price paid by him for such articles (reduced in both cases by the amount for which he is reimbursed by his vendor).

(3) The term "selling price" means selling price minus (A) amounts subsequently paid or credited to the purchaser on or before June 1, 1936, or thereafter in the bona fide settlement of a written agreement entered into on or before March 3, 1936, as reimbursement for the amount included in such price on account of a Federal excise tax; and minus (B) the allocable portion of any professional fees and expenses of litigation incurred in securing the refund or preventing the collection of the Federal ex-

cise tax, not to exceed 10 per centum of the amount of such tax.

(g) In determining costs, selling prices, and net income, the taxpayer shall, unless otherwise shown, be deemed to have sold articles in the order in which they were manufactured, produced, or acquired. Where the taxpayer's records do not adequately establish the quantity of a commodity taxable under the Agricultural Adjustment Act, as amended, entering into articles sold by him, such quantities shall be computed by the use of the conversion factors prescribed in regulations under such Act, as amended. • • •

(i) Either the taxpayer or the Commissioner may rebut the presumption established by subsection (e) by proof of the actual extent to which the taxpayer shifted to others the burden of the Federal excise tax. Such proof may include, but shall not be limited to:

(1) Proof that the change or lack of change in the margin was due to changes in factors other than the tax. Such factors shall include any clearly shown change (A) in the type or grade of article or materials, or (B) in costs of production. If the taxpayer asserts that the burden of the tax was borne by him while the burden of any other increased cost was shifted to others, the Commissioner shall determine, from the respective effective dates of the tax and of the other increase in cost as compared with the date of the change in margin, and from the general experience of the industry, whether the tax or the increase in other cost was shifted to others. If the Commissioner determines that the change in margin was due in part to the tax and in part to the increase in other cost, he shall apportion the change in margin between them.

(2) Proof that the taxpayer modified contracts of sale, or adopted a new contract of sale, to reflect the initiation, termination, or change in amount of the Federal excise tax, or at any such time changed the sale price of the article (including the effect of a change in size, package, discount terms, or any other merchandising practice) by substantially the amount of the tax or change therein, or at any time billed

the tax as a separate item to any vendee or indicated by any writing that the sale price included the amount of the tax, or contracted to refund any part of the sale price in the event of recovery of the tax or decision of its invalidity; but the taxpayer may establish that such acts were caused by factors other than the tax, or that they do not represent his practice during the period in which the articles in question were sold.

(j) As used in this section—

(1) The term "Federal excise tax" means a tax or exaction with respect to the sale, lease, manufacture, production, processing, ginning, importation, transportation, refining, recovery, or holding for sale or other disposition, of commodities or articles, provided for by any Federal statute, whether valid or invalid, if denominated a "tax" by such statute. A Federal excise tax shall be deemed to have been imposed with respect to an article if it was imposed with respect to (or with respect to the processing of) any commodity or other article, from which such article was processed.

(2) The term "date of the termination of the Federal excise tax" means, in the case of a Federal excise tax held invalid by a decision of the Supreme Court, the date of such decision.

(3) The term "refund or credit" does not include a refund or credit made in accordance with the provisions and limitations set forth in Title VII of this Act, or in section 621 (d) of the Revenue Act of 1933.

(4) The term "tax adjustment" means a repayment or credit by the taxpayer to his vendee of an amount equal to the Federal excise tax with respect to an article (less reasonable expense to the vendor in connection with the nonpayment or recovery by him of the amount of such tax and in connection with the making of such repayment or credit) if such repayment or credit is made on or before June 1, 1936, or thereafter in the bona fide settlement of a written agreement entered into on or before March 3, 1936.

(5) The term "taxpayer" means a person subject to a tax imposed by this section. * * *

(l) The taxes imposed by subsection (a) shall be imposed on the net income from the sources specified therein, regardless of any loss arising from the other transactions of the taxpayer, and regardless of whether the taxpayer had a taxable net income (under the income-tax provisions of the applicable Revenue Act) for the taxable year as a whole; except that if such application of the tax imposed by subsection (a) is held invalid, the tax under subsection (a) shall apply to that portion of the taxpayer's entire net income for the taxable year which is attributable to the net income from the sources specified in such subsection.

ARGUMENT.

The Petitioner Is Not Entitled to Withhold the Sum It Claims Herein.

A. The provision of the contract in question here which was drafted by the Government is substantially different from the provision, also drawn by Government attorneys, involved in the case of *United States* v. *Kansas Flour Mills Corporation*, 314 U. S. 212. The latter clause read as follows (314 U. S. at p. 213):

"Prices set forth herein include any Federal tax heretofore imposed by the Congress which is applicable to the material purchased under this contract. If any sales tax, processing tax, adjustment charge or other taxes or charges are imposed or changed by the Congress after the date set for the opening of the bid upon which this contract is based and made applicable directly upon the production, manufacture, or sale of the supplies covered by this contract, and are paid to the Government by the contractor on the articles or supplies herein contracted for, then the prices named in this contract will be increased or decreased accordingly, and any amount due the contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as separate items."

That clause, therefore, contained specific, explicit direction for adjustment of the price downward under the circumstances indicated. The contention of the vendor in the *Kansas Flour Mills* case was that relief from payment of processing taxes through the declaration of invalidity of the taxing statute by the Supreme Court in *United States* v. *Butler*, 297 U. S. 1, was not a "change" within the meaning of the contract, and no adjustment was consequent thereon.

However, the Supreme Court with care and nicety spelled out of the enactment of the Revenue Act of 1936, 49 Stat. 1648, a recognition and confirmation of a change in the vendor's tax liability by Congress within the meaning of the contract provision.

That determination of the Supreme Court was expressly founded on the law of contracts. The parties were held to the provision they had agreed upon. Strict construction of the contract was the essence of the decision in the *Kansas Flour Mills* case.

The Government here advances a highly conjectural argument that the contractual provision in issue is exactly equivalent under the law of contracts to that considered in the earlier decision. This argument makes a mockery of the painstaking analysis of the operation and effect of the "change" provision in the *Kansas Flour Mills* opinion. The declaration of the immateriality of the absence here of an "up and down" provision runs counter to the fact that the decision of the Supreme Court went directly on that provision.

No authority has been cited to support this strained interpretation of the contract. The decisions in *United States* v. *Glenn L. Martin Co.*, 308 U. S. 62, and *United States* v. *Cowden Mfg. Co.*, 312 U. S. 34, frequently cited in brief by the Government, stand for nothing more than that the vendors therein could not bill the Government for taxes imposed after the contracts were entered into under the respective tax clauses. In the first, the new taxes

could not be appropriately said to meet the test of "applicability." and in the second, the new taxes were paid not by the vendor but by his subcontractors. Moreover, the brief for the Government (p. 20) recognizes that the decisions in *United States* v. *American Packing & Provision Co.*, 122 F. (2d) 445 (C. C. A. 10th), cert. den. 314 U. S. 694, and *Suncook Mills* v. *United States*, 44 F. Suppl. 744 (D. Mass.), do not support the contract theory advanced by the Government in the instant case.

This attempt to create a downward price adjustment by impliction runs afoul of strict contractual interpretation. The fact that a Government contract is involved should not produce any deviation from the principles of the law of contracts. "A Government contract should be interpreted as are contracts between individuals, with a view to ascertaining the intention of the parties and to give it effect accordingly, if that can be done consistently with the terms of the instrument". *Hollerbach* v. *United States*, 233 U. S. 165, 171, 172. Or in the words of Mr. Justice Brandeis: "When the United States enters into contract relations, its right and duties therein are governed generally by the law applicable to contracts between private individuals". *Lynch* v. *United States*, 292 U. S. 571, 579.

Explicit language has always been held by the Supreme Court as a necessary predicate to liability. *United States* v. *Blair*, U. S. , No. 75, October Term 1943, decided April 10, 1944; *United States* v. *Rice*, 317 U. S. 61; *H. E. Crook Co.* v. *United States*, 270 U. S. 6. Certainly, the absence of explicit provision for a downward price adjustment in this case signifies no undertaking by the vendor that one would be provided.

Moreover, the contention of the Government asks in effect the revision of the contract to accord with its view. This, it is submitted, can not be done. In well chosen words, this Court has said: "* * * we are not justified in rewriting the clear provisions of the contract to include what might well have been but was not inserted. * * * ". *United States* v. *American Surety Co.*, U. S. ,

No. 381, October Term 1943, decided April 24, 1944.

Finally, with respect to the meaning of the contract provision, there is no better expression than the apt and significant words of Judge Madden, speaking for the Court below (R. 40):

> "We think that the language of the contract in the instant case does not express or imply an intention that the Government is to get, either as taxes or by offset or otherwise, the amount of any applicable federal tax which was in existence when the contract was made. We think the tax provision of the contract, which was drawn by the Government and whose ambiguities should therefore be resolved against the Government, may very well have been meant only to foreclose any argument as to whether federal taxes were payable upon federal purchases and the steps preparatory thereto."

There can be no question that this is a sound interpretation of a contract which did not expressly or impliedly provide for a price adjustment as suggested by Petitioner.

B. The Petitioner in its second position contends that elements of unjust enrichment are such in this case that the United States is equitably entitled to retain funds otherwise admittedly due respondent to cover amounts of unpaid processing taxes. This theory rests on three assumptions: first, that there was a mutual mistake of the parties with respect to the collectibility of the processing taxes; second, that the United States as vendee was powerless to adjust the tax discrepancy; and third, that the final result found the vendor unjustly enriched at the expense of the taxpaying public.

With respect to any theory of mutual mistake, it is pointed out that the tax clause itself, drafted by the Government, did not mention processing taxes specifically and provided for no price adjustment downward. There was a recognized doubt as to the validity of the processing taxes

when the contract was entered into on November 13, 1935. By that time courts everywhere were granting injunctions restraining collection of the processing tax following the decision of the Circuit Court of Appeals in *Butler* v. *United States*, 78 F. 2d 1 (CCA 1). That this legal situation weighed heavily in the bid price and that it would not have, as petitioner argues in brief at page 21, have been reduced pro tanto, is shown by the fact that only $1,706.59 unjust enrichment tax was determined by the government as a result of the inclusion of this contract.

The vendee in a private contract may have the chance to pass the tax burden on to his customers. The United States through its power to tax can legislatively pass that burden right back to the vender, not to the taxpaying public. This is exactly what Congress immediately did in the passage of the Revenue Act of 1936 so that it cannot be said the United States was without a remedy. The unjust enrichment tax imposed by Section 501 of that Act laid down expressly elaborate standards for determining just what a vendor should pay to the United States for having shifted to another the burden of processing taxes he did not pay.

Contrary to the facts in the case of *United States* v. *American Packing & Provision*, 122 F. 2d 445, cert. den. 314 U. S. 694, and apparently in the case of *Suncook Mills* v. *United States*, 44 F. Supp. 744, and for that matter in the *Kansas Flour Mills* case itself, the United States has irrevocably collected from respondent vendor here an unjust enrichment tax on the very contracts involved. Petitioner not only had available, but has availed itself of, another entirely adequate remedy.

Moreover, it must be remembered that the total price under the contract here was only $27,185.25 (R. 12). If 80% of the "unjust enrichment" funds determined as specified by Congress is $1,706.59, it is obvious that the total of such "unjust enrichment" was less than 8% of the total price, and, after the unjust enrichment tax was

paid, only $426.65* of that fund was left to the vendor respondent here, and that by Congressional direction and consent.

If this $426.65 which Congress left respondent is compared with the $6,773.01, i.e. $8,479.60 less $1,706.59, belonging to respondent, which petitioner is seeking to retain here, the government's position can scarcely appeal to the conscience of the court. It is asking more than 30 per cent reduction in a contract price which it has already determined involved an unjust enrichment of less than 8 per cent prior to its collection of the $1,706.59.

Any conclusion that respondent was unjustly enriched in excess of the sum of $426.65 must be based upon pure assumptions of fact without any support in the record. The assumptions, moreover, must disregard the very criteria Congress has prescribed and which as the record does show leaves respondent with $426.65 of unjust enrichment at most. Petitioner asks this Court to substitute judicial assumption for the Congressional criteria in determining the equities here, and seeks to wash its own hands by admitting respondent's right to recover the $1,706.59 it previously sought and received under the remedy already utilized by it. Petitioner has established no claim for equitable relief.

CONCLUSION.

The decision of the Court below is correct and should be affirmed.

Respectfully submitted,

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November 1944.

* The figure, $341.40, used in the brief in opposition (R. 14) is an error in mathematical computation; $426.65 is undeniably correct.

SUPREME COURT OF THE UNITED STATES.

No. 72.—October Term, 1944.

The United States, Petitioner, vs. Standard Rice Company, Inc. } On Writ of Certiorari to the Court of Claims.

[December 4, 1944.]

Mr. Justice Douglas delivered the opinion of the Court.

This suit was brought in the Court of Claims to recover an overpayment of income taxes made by respondent. The United States conceded that the amount claimed was owed. But the Comptroller General, pursuant to his power under § [illegible] of the Budget and Accounting Act of 1921 (42 Stat. 29, 31 U. S. C. § 71) settled and adjusted the claim by offsetting against it an amount which he concluded respondent owed the United States under a contract. Since the latter claim equalled the overassessment on the income taxes, the Comptroller General refused to authorize a refund to respondent. This suit followed. The Court of Claims denied the offset and entered judgment for respondent in the amount claimed with interest. 53 F. Supp. 717. The case is here on a petition for a writ of certiorari[1] which we granted because of an asserted conflict of the decision below with *United States* v. *American Packing & Provision Co.*, 122 F. 2d 445 and *United States* v. *Kansas Flour Corp.*, 314 U. S. 212.

The contract under which the claim against respondent was asserted was made in November, 1935. Respondent agreed to supply rice to the Navy Department at the bid prices specified in the contract. A typical price provision listed 290,000 pounds of rice at a unit price (per pound) of .046¢ or a total price of $13,340. The contract contained the following provision:

> "Prices bid herein include any federal tax heretofore imposed by the Congress which is applicable to the material on this bid. Any sales tax, duties, imposts, revenues, excise or other taxes which may hereafter (the date set for the opening of this bid) be imposed by the Congress and made applicable to the material on this bid will be charged to the Government and entered on invoices as a separate item."

[1] See Act of February 13, 1925, § 3(b), 43 Stat. 939, amended by the Act of May 22, 1939, 53 Stat. 752, 28 U. S. C. § 288(b).

Respondent made the required deliveries to the United States and received the full price specified in the contract. Respondent was the first domestic processor of the rice and accordingly paid the processing taxes imposed by the Agricultural Adjustment Act (48 Stat. 31, 7 U. S. C. §§ 609, 611) from April 1, 1935, until September 20, 1935. Before paying the processing tax on the rice processed for the month of October, 1935, respondent obtained an injunction against its collection. The tax was held invalid in *United States* v. *Butler*, 297 U. S. 1, decided January 6, 1936. Consequently respondent never paid the processing taxes on the rice supplied to the United States under the November, 1935, contract.[2]

The tax was a federal tax "applicable" to the rice within the meaning of the contract. *United States* v. *Glenn L. Martin Co.*, 308 U. S. 62, 65. Its amount was known, and the vendor was responsible by regulation for its payment. *United States* v. *Kansas Flour Mills Corp.*, *supra*, p. 214. It is therefore arguable that the vendor fixed the bid price to provide a margin of profit after payment of those taxes for which it was responsible, that the price was designed to offset *pro tanto* the amount of the taxes, and that if they were not paid, the price should be reduced. That is the position taken by the United States and it relies on the following statement in *United States* v. *Kansas Flour Mills Corp.*, *supra*, pp. 216-217: "In the contracts in question, the Government did not buy for resale. Unless it received the tax it suffered a definite disadvantage. Its purpose, as shown by the contracts, was to balance the tax element in the price paid with the tax collected. The Government, which could not pass on the tax on resale, was thus protected not against a fall in the market price but against a loss in its tax revenues." But we were there only answering the argument that since the vendor did not undertake to pay the tax, the rule in private contracts should be followed and no readjustment of the price made where the tax was not paid. The difference between the cases was that in the latter situation the vendee pre-

[2] Respondent did, however, pay an unjust enrichment tax of $72,072.30 on account of being relieved of the processing tax. See Title III of the Revenue Act of 1936, 49 Stat. 1648, 1734. It was computed and assessed upon the basis of inclusion of units involved in this suit. If those units had been excluded, the unjust enrichment tax would have been reduced by $1,706.59. If respondent is required to reduce its price by the amount of the unpaid processing tax, it is not subject to the unjust enrichment tax on these transactions. See United States v. Kansas Flour Mills Corp., *supra*, p. 216, note 6. The United States concedes that if it prevails the respondent is entitled to recover $1,706.59.

suitably passed on the tax while the United States did not since it did not buy for resale. The vital fact in *United States* v. *Kansas Flour Mills Corp.* was the provision in the contract for an up-or-down revision of the price in case of a change in the processing tax by Congress. It provided that if a processing tax was thereafter "imposed or changed by the Congress", the contract price was to be "increased or decreased accordingly." It was held that the decision in *United States* v. *Butler* and its recognition in the Revenue Act of 1936 amounted to a downward change calling for a decrease in the contract price. 314 U. S. p. 217. There is no such provision in the present contract. The clause that the bid prices includes "any Federal tax heretofore imposed by the Congress which is applicable to the material" must be read in the context of this particular contract. When it is so read, a result different from that reached in *United States* v. *Kansas Flour Mills Corp.* is indicated.

The present contract provides for payment by the United States of sales and other taxes thereafter imposed by Congress and made applicable to the rice. But while it makes that provision for upward readjustment of the price, it provides for no downward revision in case of subsequent changes in any tax. That silence gains added significance here in view of the fact that at the time the contract was made the payment of these processing taxes was being hotly contested and the litigation resulting in *United States* v. *Butler*, *supra*, was well under way. The inference is strong therefore that the parties intended the price to be firm, except as it might be increased through the imposition of new taxes. The provision for the inclusion of applicable taxes provides a formula for determining the price to be billed. Since the tax in question could not by the terms of the contract be billed to the United States, there was no overcharge. If the contractor lawfully avoids payment of a tax he reduces his cost and increases his profit. But in absence of a provision which authorizes it the reduction of cost is hardly the basis of a refund to the United States. As the Court of Claims points out, it is hard to see how the vendor could be required to pay the United States any savings which it made as a result of reductions in tariff duties. Yet the difference between them and other taxes under this contract is not apparent. Although there will be exceptions, in general the United States as a contractor must be treated as other contractors under analogous situa-

tions. When problems of the interpretation of its contracts arise the law of contracts governs. *Hollerbach* v. *United States*, 233 U. S. 165, 171-172; *United States* v. *Bethlehem Steel Corp.*, 315 U. S. 289, 298-299. We will treat it like any other contractor and not revise the contract which it draws on the ground that a more prudent one might have been made. *United States* v. *American Surety Co.*, 322 U. S. 96.

Affirmed.

Mr. Justice Black dissents.